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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2016–0008; T.D. TTB–148; Re: Notice No. 162]

RIN 1513–AC32

Expansion of the Outer Coast Plain Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is expanding the approximately 2.25 million-acre “Outer Coastal Plain” viticultural area of southeastern New Jersey by approximately 32,932 acres. The Outer Coastal Plain AVA includes all or portions of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean, and Salem counties. The established viticultural area and the expansion area are not located within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dana Register, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone (202) 453–1039, ext. 022.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and

submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Petitioners may use the same process to request changes involving established AVAs. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for modifying established AVAs. Petitions to expand an established AVA must include the following:

- Evidence that the area within the proposed expansion area boundary is nationally or locally known by the name of the established AVA;
- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and
- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

Petition to Expand the Outer Coast Plain AVA

TTB received a petition from John and Jane Giunco, owners of 4JG's Orchards and Vineyards in Colts Neck, New Jersey, proposing to expand the established "Outer Coastal Plain" AVA. The Outer Coastal Plain AVA (27 CFR 9.207) was established by T.D. TTB-58, which was published in the **Federal Register** on February 9, 2007 (72 FR 6165). The Outer Coastal Plain AVA covers approximately 2.25 million acres in all or portions of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean, and Salem Counties. The Outer Coastal Plain AVA and the proposed expansion area do not overlap, nor are they within, any other established or proposed AVAs.

The proposed expansion area is located in Monmouth County, adjacent to the western edge of the existing Outer Coastal Plain AVA boundary, and covers approximately 32,932 acres. According to the petition, one commercial vineyard covering a total of 30 acres is located within the proposed expansion area. The vineyard also has its own winery. The vineyard and the winery both existed at the time the Outer Coastal Plain AVA was established in 2007 and are owned by the petitioner. The petitioners for the expansion of the AVA assert in their petition that when the AVA was established, the region of the proposed expansion was intended to be included in the AVA but was inadvertently omitted. The petitioners state that they only recently learned that they are not within the AVA's boundaries.

The petition included a letter from the current president of the Outer Coastal Plain Vineyard Association stating that the Association supports the proposed expansion, and noting that the petitioners for the expansion have been members of that Association since 2006. TTB notes that the Association's website lists as a member Bellview Winery, the original petitioner for the Outer Coastal Plain AVA.

According to the petition, the proposed expansion area is similar to the established Outer Coastal Plain AVA with regard to its primary distinguishing features: the soils, elevations, and climate. The most common soils of the proposed expansion area are well-drained soils that contain large amounts of sand and/or gravel, similar to the soils within the Outer Coastal Plain AVA, as described in T.D. TTB-58, which established that AVA. The proposed expansion

area and the established Outer Coastal Plain AVA are also both regions of agricultural land with low elevations. Within the Outer Coastal Plain AVA, the elevations are below 280 feet, and within the proposed expansion area, the elevations primarily range from 6 to 150 feet above sea level with a small region along the western edge of the proposed expansion area reaching 250 feet. Finally, although much of the established AVA has a growing season ranging from 190 to 217 days, the proposed expansion area's growing season of 188 to 192 days is similar to that of the adjacent portion of the Outer Coastal Plain AVA.

The regions to the west and northwest of the proposed expansion area are outside the Outer Coastal Plain AVA. These regions are marked by a belt of hills called the *cuestas*. Elevations within the *cuestas* can reach as high as 1,680 feet, which is significantly higher than the elevations in both the proposed expansion area and the Outer Coastal Plain AVA. The growing season length within most of the *cuestas* is also shorter than the growing seasons for the proposed expansion area and the Outer Coastal Plain AVA. The portion of the *cuestas* immediately adjacent to the proposed expansion area has a growing season length of between 185 and 188 days, but moving farther west and north within the *cuestas*, the growing season shortens to between 163 and 179 days. Finally, the soils of the *cuesta* region differ from soils within the proposed expansion area and the Outer Coastal Plain AVA in that they have higher clay content and less sand and gravel.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 162 in the **Federal Register** on September 20, 2016 (81 FR 64368), proposing to expand the Outer Coastal Plain AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed expansion area. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed expansion area, and for a comparison of the distinguishing features of the proposed expansion area to the surrounding areas and to the established Outer Coastal Plain AVA, see Notice No. 162.

Comments Received

In Notice No. 162, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. The comment period closed on November 21, 2016.

In response to Notice No. 162, TTB received one comment. The commenter, who describes himself as a past President of the Outer Coastal Plain Vineyard Association who was involved with the determination of the distinguishing features of the established Outer Coastal Plain AVA, supported the expansion of the Outer Coastal Plain AVA. The commenter stated his belief that the expansion petition contained “valid name evidence, boundary evidence and distinctive features that are recognizable features of the Outer Coastal Plain,” and he specifically cited as shared features the sandy loam and loamy sand soils, soil drainage, and the length of growing degree days. The commenter also stated his belief that the proposed expansion area should be added to the

existing AVA. The comment did not raise any new issues concerning the proposed AVA expansion. TTB received no comments opposing the expansion of the Outer Coastal Plain AVA.

TTB Determination

After careful review of the petition and the comment received, TTB finds that the evidence provided by the petitioner sufficiently demonstrates that the proposed expansion area shares the characteristics of the established Outer Coastal Plain AVA and should also be recognized as part of that AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB expands the 2.25 million-acre Outer Coastal Plain AVA to include the approximately 32,932-acre expansion area as described in Notice No. 162, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the AVA expansion in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA

name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance, and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The expansion of the Outer Coastal Plain AVA will not affect any other existing AVA, and bottlers using “Outer Coastal Plain” as an appellation of origin or in a brand name for wines made from grapes within the Outer Coastal Plain AVA will not be affected by this expansion. The expansion of the Outer Coastal Plain AVA will allow vintners to use “Outer Coastal Plain” as an appellation of origin for wines made primarily from grapes grown within the expansion area if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts

and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Dana Register of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Section 9.207 is amended by:

- a. Revising paragraphs (b) introductory text and (b)(6) and (7);
- b. Adding paragraphs (b)(8) through (10);
- c. Revising paragraphs (c)(16) and (17);

d. Redesignating paragraphs (c)(18) through (22) as paragraphs (c)(21) through (25); and

e. Adding new paragraphs (c)(18) through (20).

The revisions and additions read as follows:

§ 9.207 Outer Coastal Plain.

* * * * *

(b) Approved maps. The appropriate maps for determining the boundary of the Outer Coastal Plain viticultural area are 10 United States Geological Survey topographic maps. They are titled:

* * * * *

(6) Cape May, New Jersey, 1981, 1:100,000 scale;

(7) Dover, Delaware–New Jersey–Maryland, 1984, 1:100,000 scale;

(8) Freehold, New Jersey, 2014, 1:24,000 scale;

(9) Marlboro, New Jersey, 2014, 1:24,000 scale; and

(10) Keyport, New Jersey–New York, 2014, 1:24,000 scale.

(c) * * *

(16) Continue northeasterly on CR 537, crossing onto the Freehold, New Jersey, map, to the intersection of CR 537 (known locally as W. Main Street) and State Route 79 (known locally as S. Main Street) in Freehold; then

(17) Proceed northeasterly, then northerly, along State Route 79, crossing onto the Marlboro, New Jersey, map to the intersection of State Route 79 and Pleasant Valley Road in Wickatunk; then

(18) Proceed northeasterly, then southeasterly along Pleasant Valley Road to the road's intersection with Schank Road, south of Pleasant Valley; then

(19) Proceed easterly along Schank Road to the road's intersection with Holmdel Road; then

(20) Proceed northerly along Holmdel Road, crossing onto the Keyport, New Jersey–New York map, to the road's intersection with the Garden State Parkway, north of Crawford Corners; then

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Signed: May 2, 2017.

John J. Manfreda,

Administrator.

Approved: October 19, 2017.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).

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